

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT**

**NASHVILLE, TENNESSEE**

**JUNE 21, 2001**

<b>IN RE:</b>	)	
	)	
<b>PETITION OF BELL SOUTH TELECOMMUNICATIONS, INC.</b>	)	<b>DOCKET NO.</b>
<b>TO CONVENE A CONTESTED CASE TO ESTABLISH</b>	)	<b>97-01262</b>
<b>“PERMANENT PRICES” FOR INTERCONNECTION</b>	)	
<b>AND UNBUNDLED NETWORK ELEMENTS</b>	)	
	)	
<b>IN RE:</b>	)	
	)	
<b>GENERIC DOCKET TO ESTABLISH GENERALLY</b>	)	<b>DOCKET NO.</b>
<b>AVAILABLE TERMS AND CONDITIONS FOR</b>	)	<b>01-00526</b>
<b>INTERCONNECTION</b>	)	
	)	

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**ORDER DENYING TARIFF NO. 01-00205  
AND OPENING DOCKET NO. 01-00526**

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This matter came before the Tennessee Regulatory Authority (“Authority” or “TRA”) at a regularly scheduled Authority Conference held on June 12, 2001 for consideration of Tariff No. 01-00205 filed by BellSouth Telecommunications, Inc. (“BellSouth”) on March 2, 2001.

**Procedural History**

On February 23, 2001, the Authority issued a *Final Order* in Docket No. 97-01262 memorializing the deliberations during the December 19, 2000 Authority Conference. In the *Final Order*, the Authority directed BellSouth to file “tariffs containing the [unbundled network element (“UNE”)] rates approved by the authority in this docket as well as the terms and conditions applicable to each UNE.”<sup>1</sup> On January 18, 2001, BellSouth filed a *Filing in Response*

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<sup>1</sup> *Final Order*, p. 20 (Feb. 23, 2001).

to *Action Taken at December 19, 2000 Director's Conference*.<sup>2</sup> On February 20, 2001, the Southeastern Competitive Carriers Association ("SECCA") filed a *Motion for Enforcement of TRA Order*. SECCA requested that the Authority:

take immediate action to enforce the agency's decision announced on December 19, 2000. On that date, the Directors issued a decision requiring BellSouth to submit final rates, terms and conditions for interconnection services and unbundled network elements ("UNEs") and to "file tariffs . . . reflecting these decisions and previous orders in this docket and containing the UNE rates approved by the Authority, as well as the terms and conditions applicable for each UNE." Tr. at 36 (emphasis added)

On January 18, 2001, BellSouth--instead of filing tariffs--submitted the company's current standard interconnection agreement containing the revised UNE rates. In a document styled, *Filing in Response to Action Taken at December 19, 2000 Director's Conference*, BellSouth stated that "a traditional tariff could be confusing, would be difficult for the Authority and BellSouth to administer, and is unnecessary."

Because BellSouth refused to obey the agency's order, there is no tariff now in effect containing the UNE rates approved by the Authority . . .<sup>3</sup>

The Authority first addressed the Motion under "Miscellaneous Business" at the regularly scheduled Authority Conference on February 21, 2001. In response to questions concerning why BellSouth had not yet filed a tariff, BellSouth contended that its January 18, 2001 *Filing in Response to Action Taken at December 19, 2000 Director's Conference* was filed in lieu of a tariff and that BellSouth needed clarification as to the Authority's December 19th directives. The Directors recommended that BellSouth meet with Authority Staff in regard to the alleged need for "clarification." The Directors appointed Director H. Lynn Greer to preside over any proceedings in the event that the meeting with Authority Staff was unsuccessful.

Thereafter, Director Greer, acting as the Presiding Officer, obtained SECCA and BellSouth's agreement to convene a proceeding on February 22, 2001 in the event the parties

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<sup>2</sup> BellSouth's filing included three attachments, which contained the rates and terms and conditions it believed would comply with the Authority's December 19<sup>th</sup> rulings. BellSouth filed corrections to the January 18<sup>th</sup> filing on January 31, 2001 and February 12, 2001.

<sup>3</sup> *Motion for Enforcement of TRA Order*, p. 1 (Feb. 20, 2001).

could not resolve their complaints during the meeting with Authority Staff. After the informal meeting with Authority Staff proved to be unproductive, the Presiding Officer issued a *Notice of Prehearing Conference* for February 22, 2001 at 1:00 p.m.

On February 23, 2001, the Presiding Officer issued an Order. In the Order, the Presiding Officer made the following findings and conclusions:

The new rates adopted by the Authority on December 19, 2000, which were included in BellSouth's January 18, 2001 filing and were amended by BellSouth's corrected submissions of January 31 and February 12, 2001, are effective as of December 19, 2000.

The Presiding Officer finds that the filing of a tariff is necessary because such allows [competing local exchange carriers ("CLECs")] to buy off the tariff with a certain effective date. Furthermore, a tariff on file allows CLECs to review those rates the Authority has determined to be cost-based and compliant with federal and state law. A tariff on file also assures the non-discriminatory availability of cost-based rates to all CLECs.

The Presiding Officer finds that BellSouth's tariff is overdue, per the December 19, 2000 directive of the Authority and shall be filed no later than **12:00 Noon on Friday, March 2, 2001**. Failure to comply with this deadline may result in further action by the Authority including, but not limited to, sanctions imposed from the original date the tariff was due.

The Presiding Officer finds that BellSouth has agreed to make the December 19<sup>th</sup> rates available to any requesting CLEC with an interconnection agreement through a simple amendment process.<sup>4</sup> Given BellSouth's offer to make permanent rates effective December 19, 2000 and the above directive that BellSouth file its tariff on March 2, 2001, the Presiding Officer concludes that no further action needs to be taken at this time on SECCA's Motion.<sup>5</sup>

On March 2, 2001, as directed by the Presiding Officer, BellSouth filed Tariff No. 01-00205.<sup>6</sup>

The Authority next considered this matter at the March 6, 2001 Authority Conference. During the Conference, the Directors questioned the parties with regard to when, after the parties complete the amendment process, the permanent rates would replace the old rates on the CLEC's

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<sup>4</sup> Transcript of Proceedings, Feb. 22, 2001, pp. 29 & 36.

<sup>5</sup> *Order Reflecting Action Taken During February 22, 2001 Proceeding*, pp. 5-6 (Feb. 23, 2001).

<sup>6</sup> On March 9, 2001, BellSouth filed a letter containing explanations of certain items in the March 2<sup>nd</sup> tariff filing.

monthly bill. BellSouth stated that the permanent rates would appear on the CLEC's bill possibly within one billing cycle, but no more than two billing cycles.<sup>7</sup>

The Directors next turned to the amendment process. A lengthy discussion ensued, and the Authority recessed the proceedings so that counsel for BellSouth could discuss several issues raised during the discussions with his client. Upon the Authority reconvening the proceeding, counsel for BellSouth stated:

BellSouth will accept a letter request from CLECs as sufficient to implement the new rates for all CLECs that have interconnection agreements in Tennessee. The rates would be effective as of December 19th, or earlier if the contract so provides a true up. BellSouth will also notify all certified CLECs in Tennessee by means of our carrier website as to the availability of the new rates. One thing that was not discussed in the proposal, because it did not come up, and our clients had thought of this actually, Director Malone, was that to include on the website electronically a template contract amendment that would speed the process up. So that a CLEC could see the amendment itself electronically on the Internet site, on the website, and say, you know, yes, I'd like to do that and just, you know, download it and sign it and fax it to us. I think that would speed the process up.<sup>8</sup>

The Authority then questioned BellSouth with regard to the implementation of the Authority's permanent de-averaged rates. Counsel for BellSouth stated:

The interim de-averaged proxy loop rates were included in a notice provided through our carrier website to the CLECs in Tennessee. And the CLECs were asked to contact BellSouth if they wanted to avail themselves of the de-averaged rates. They could do that by phone or fax in response to the website notification. And then contract amendments were required, consistent with what we have been talking about earlier. And, of course, those de-averaged loop rates have been superseded by your permanent de-averaged rates. Those were interim rates. And what we talked about today with respect to Director Malone's proposal will include the permanent de-averaged rates.<sup>9</sup>

In addition to obtaining these agreements, the Authority ordered that a notice issue setting a due

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<sup>7</sup> Transcript of Proceedings, Mar. 6, 2001, pp. 41 & 60.

<sup>8</sup> *Id.* at 94-95.

<sup>9</sup> *Id.* at 105.

date for comments on the Tariff.<sup>10</sup> In accordance with this directive, the Authority issued a notice on March 6, 2001 requesting that parties file comments by March 16, 2001. As directed, AT&T Communications of the South Central States, Inc. and SECCA filed comments on March 16, 2001, and BellSouth filed its response on April 16, 2001.

## **II. Findings and Conclusions**

Based on the Tariff and the entire record in this proceeding, the Authority made the following findings and conclusions.

1. Certain provisions in the Tariff are inconsistent with past decisions of the Authority in Docket No. 97-01262 and in other arbitration proceedings, generic dockets, and enforcement proceedings.

2. The only basis for the terms and conditions contained in the Tariff is that they are BellSouth's standard interconnection terms and conditions.

3. The Tariff omits non-recurring rates for "new" combinations, that is, combinations that are not presently combined, but that are of a type of combination that is combined somewhere in BellSouth's network. Consistent with the Erratum issued by the Authority in Docket No. 97-01262 on March 6, 2001, BellSouth shall set nonrecurring rates for new combinations at the "sum of the unbundled network element prices after adjustments for nonrecurring costs to reflect efficiencies."<sup>11</sup>

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<sup>10</sup> *Id.* at 90-91.

<sup>11</sup> *Correction of Transcript of April 25, 2000 Authority Conference and Erratum to Second Interim Order Re: Revised Cost Studies and Geographic Deaveraging*, p. 2 (Mar. 6, 2001).

4. The Tariff omits UNE rates for Operator Services and Directory Assistance. Before BellSouth may be relieved of its obligations under FCC Rule 319(f),<sup>12</sup> the Authority must find that BellSouth's routing solution is functionally adequate and delineate the service areas where the compliant routing solution is available to competing carriers.<sup>13</sup> The Authority has not made such a finding in any docket.

5. The Tariff fails to include rates for interim number portability. The Authority has yet to find that BellSouth has implemented its long-term number portability solution.<sup>14</sup>

6. The Tariff contains language that is inconsistent with the Authority's ruling in Docket No. 97-01262 on access to loops served by Integrated Digital Loop Carrier.

7. A generic docket to resolve issues frequently arbitrated and to produce generally available interconnection terms and conditions would benefit competition. The availability of such terms and conditions will streamline the interconnection process and mitigate difficulties that CLECs may have in obtaining cost-based interconnection rates in a timely fashion. These goals are consistent with federal and state law.<sup>15</sup>

Based on these findings and conclusions, the Authority voted unanimously to deny the Tariff, order BellSouth to file a revised tariff by **Tuesday, June 26, 2001**, open a generic docket,

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<sup>12</sup> 47 C.F.R. § 51.319(f) provides:

Operator services and directory assistance. An incumbent LEC shall provide nondiscriminatory access in accordance with § 51.311 and section 251(c)(3) of the Act to operator services and directory assistance on an unbundled basis to any requesting telecommunications carrier for the provision of a telecommunications service only where the incumbent LEC does not provide the requesting telecommunications carrier with customized routing or a compatible signaling protocol. Operator services are any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call. Directory assistance is a service that allows subscribers to retrieve telephone numbers of other subscribers.

<sup>13</sup> See *In re: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, FCC 99-238, CC Docket No. 96-98, 15 FCC Rcd. 3,696, ¶ 463 (Nov. 5, 1999) (Third Report and Order and Fourth Notice of Proposed Rulemaking).

<sup>14</sup> See *In re: Telephone Number Portability*, FCC 98-275, CC Docket No. 95-116, 13 FCC Rcd. 21,204, ¶ 16 (Oct. 20, 1998) (Second Memorandum Opinion and Order on Reconsideration).

<sup>15</sup> See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (purpose of Act); Tenn. Code Ann. § 65-4-123 (Supp. 2000).

appoint a pre-hearing officer in the generic docket, and direct BellSouth to file documentation establishing that it has implemented its long-term number portability solution, assuming it has done such. The Directors determined that the revised tariff shall be consistent with decisions in Docket No. 97-01262 and, if BellSouth chooses to include terms and conditions for subjects not addressed in Docket No. 97-01262, such as reciprocal compensation, then such terms and conditions shall be consistent with all decisions of the Authority in other arbitration proceedings, generic dockets and enforcement proceedings. Specifically, the Authority directed that the revised tariff shall include non-recurring rates for new combinations pursuant to the March 6, 2001 Erratum; rates for Operator Services, Directory Assistance, and interim number portability found in the December 1, 1999 cost study; and terms and conditions consistent with the Authority's decisions on access to Integrated Digital Loop Carrier. Lastly, the Authority held that the purposes of the generic docket were to resolve frequently arbitrated issues and create generally available interconnection terms and conditions that any CLEC could elect without negotiation and/or arbitration. The Authority held that the standard interconnection agreement resulting from the generic docket should incorporate the performance measurements, benchmarks, and enforcement mechanisms to be determined in Docket No. 01-00193 and reflect the Authority's forthcoming decisions in Docket No. 00-00544, the "Line Sharing" proceeding.

**IT IS THEREFORE ORDERED THAT:**


1. Tariff No. 01-00205 filed by BellSouth Telecommunications, Inc. on March 2, 2001 is denied. BellSouth shall file a revised tariff consistent with this Order no later than **Tuesday, June 26, 2001.**

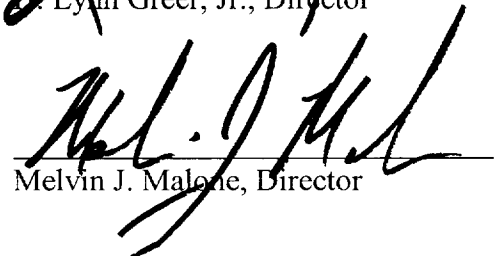
2. *In re: Generic Docket to Establish Generally Available Terms and Conditions for Interconnection*, Docket No. 01-00526, is hereby opened to resolve frequently arbitrated issues

and create generally available interconnection terms and conditions. General Counsel or his designee is appointed Pre-Hearing Officer in this matter for the purposes of establishing a procedural schedule to completion and disposing of all preliminary matters.

3. Any party aggrieved by this Order may file a Petition for Reconsideration pursuant to Tenn. Code Ann. § 4-5-317 with the Tennessee Regulatory Authority within fifteen (15) days of the entry of this Order.

  
Sara Kyle, Chairman

  
H. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary